



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2016-0707; FRL-9962-09-Region 5]

Air Plan Approval; Indiana; Commissioner's Order for Carmeuse
Lime, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, as a revision to the Indiana State Implementation Plan (SIP), a submittal from the Indiana Department of Environmental Management (IDEM) to EPA, dated December 22, 2016. The submittal consists of an order issued by the Commissioner of IDEM that establishes permanent and enforceable sulfur dioxide (SO₂) emission limits for Carmeuse Lime, Inc. (Carmeuse), applicable to its Gary, Indiana lime manufacturing plant. IDEM submitted this order so the area near Carmeuse can be designated "attainment" of the 2010 primary SO₂ National Ambient Air Quality Standards (NAAQS), a matter that will be addressed in a separate future rulemaking. EPA's approval of this order would make these SO₂ emission limits and applicable reporting, recordkeeping, and compliance demonstration requirements part of the federally enforceable Indiana SIP.

DATES: This direct final rule will be effective **[insert date 60 days after date of publication in the Federal Register]**, unless EPA receives adverse comments by **[insert date 30 days after date of publication in the Federal Register]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Nos. EPA-R05-OAR-2016-0707 at <http://www.regulations.gov> or via email to aburano.douglas@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the

web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Joseph Ko, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7947, ko.joseph@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Why Did IDEM Issue This Commissioner's Order?
- II. What Are the SO₂ Limits in This Commissioner's Order?
- III. By What Criterion is EPA Reviewing This SIP Revision?
- IV. What Action is EPA Taking?
- V. Incorporation by Reference.
- VI. Statutory and Executive Order Reviews.

I. Why Did IDEM Issue This Commissioner's Orders?

On December 22, 2016, IDEM submitted for approval, as a

revision to the Indiana SIP, an order issued by IDEM's Commissioner that establishes SO₂ emission limits for Carmeuse. SO₂ emission limits for Carmeuse previously did not exist in the Indiana SIP. IDEM established these emission limits so the area near Carmeuse can qualify in the future for being designated "attainment" of the 2010 primary SO₂ NAAQS. The history of the 2010 SO₂ NAAQS and the applicable Data Requirements Rule (DRR) is explained below in order to provide a more detailed explanation of the context for IDEM's request.

On June 3, 2010, pursuant to section 109 of the Clean Air Act (CAA), EPA revised the primary (health-based) SO₂ NAAQS by establishing a new one-hour standard codified at title 40 Code of Federal Regulations (CFR) section 51.17 (75 FR 35520). Pursuant to section 107(d) of the CAA, EPA must designate areas as either "unclassifiable," "attainment," or "nonattainment" for the 2010 one-hour SO₂ primary NAAQS. Under Section 107(d) of the CAA, a nonattainment area is any area that does not meet the NAAQS or that contributes to a violation in a nearby area. An attainment area is any area, other than a nonattainment area, that meets the NAAQS. Unclassifiable areas are those that cannot be classified on the basis of available information as meeting or not meeting the NAAQS.

On August 5, 2013, EPA published a final rule designating 29 areas in the United States as nonattainment for the 2010 SO₂ NAAQS, based on recorded air quality monitoring data from 2009 - 2011 that showed violations of the NAAQS (78 FR 47191). In that rulemaking, EPA committed to address, in separate future actions, the designations for all other areas for which EPA was not yet prepared to issue designations.

Following the initial August 5, 2013, designations, three lawsuits were filed against EPA in different U.S. District Courts, alleging that EPA had failed to perform a nondiscretionary duty under the CAA by not designating all portions of the country by June 2013, three years after the promulgation of the revised SO₂ NAAQS, as required by Section 107(d) of the CAA. In an effort intended to resolve the litigation in one of those cases, plaintiffs Sierra Club and the Natural Resources Defense Council and EPA filed a proposed consent decree with the U.S. District Court for the Northern District of California. On March 2, 2015, the Court entered the consent decree and issued an enforceable order for EPA to complete the area designations according to the Court-ordered

schedule.¹ The consent decree required EPA to complete the designations in three additional rounds following EPA's original designations (Round 1): Round 2 by July 2, 2016, Round 3 by December 31, 2017, and Round 4 by December 31, 2020. This action falls within Round 3 of the designation process.

Under the DRR (80 FR 51052), each state air agency was required to submit a list to the EPA by January 15, 2016, that identified all sources within the state that had SO₂ emissions exceeding 2,000 tons per year (tpy) during the most recent year for which emissions data for those sources were available, plus any additional sources and their associated areas identified by the air agency or by the EPA as also warranting air quality characterization due to their potential to contribute to an SO₂ NAAQS violation.

Carmeuse's lime manufacturing plant was not identified by IDEM as one of the sources covered by the DRR since the SO₂ emissions from the facility did not exceed 2,000 tpy; but IDEM determined that emissions from the plant could adversely impact overall SO₂ air quality for Lake County. Based on modeling conducted by Indiana in accordance with EPA's *Draft SO₂ NAAQS*

¹ *Sierra Club et al. v. EPA*, No. 3:13-cv-3953-SI (N.D.Cal.)

*Designations Modeling Technical Assistance Document*², these emission limits in the Commissioner's Order will ensure modeled attainment of the 2010 SO₂ NAAQS. IDEM conducted air dispersion modeling using the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) version 15181 in accordance with appendix W of 40 CFR part 51 to determine SO₂ emission limits for Carmeuse that will ensure modeled attainment of the 2010 SO₂ NAAQS in the area near this facility.

IDEM has requested that EPA approve Commissioner's Order 2016-04 for Carmeuse as part of the Indiana's SIP. If EPA approves the SO₂ emission limits contained in these orders, they will become federally enforceable. Once these SO₂ emission limits have become federally enforceable, IDEM intends to use them to demonstrate modeled attainment for the 2010 SO₂ NAAQS for the area near Carmeuse. To be clear, the purpose of this rulemaking is to take action on IDEM's request to approve these SO₂ emission limits into the Indiana SIP and thereby make them federally enforceable. The purpose of this rulemaking is *not* to take action on whether these SO₂ emission limits are adequate for EPA to designate attainment of the 2010 SO₂ NAAQS for the area

² *Draft SO₂ NAAQS Designations Modeling Technical Assistance Document*. December 2013.
<http://www3.epa.gov/airquality/sulfurdioxide/pdfs/SO2ModelingTAD.pdf>

near Carmeuse. EPA intends to complete 2010 SO₂ NAAQS designations for areas under the Federal consent decree deadlines, including the area near Carmeuse, in separate rulemakings.

II. What Are the SO₂ Limits in This Commissioner's Orders?

Indiana issued Commissioner's Order 2016-04 on November 15, 2016, with an effective date of 18 days after issuance. This order established SO₂ emission limits for five kilns (with six stacks per kiln) at the Carmeuse facility. Modeling for the Commissioner's Order showed that an emission limit of 12.0 pounds per hour of SO₂ for each kiln, or 2.0 pounds per hour for each stack, would ensure attainment of the 2010 SO₂ NAAQS. Indiana calculated a rolling 720-operating-hour average limit of 9.48 pounds per hour for each kiln, based on a flat averaging ratio of 0.79 recommended in EPA's *Guidance for 1-hour SO₂ Nonattainment Area SIP Submission*. This limit has a comparable stringency to an hourly emission limit. The Commissioner's Order requires that Carmeuse comply with this rolling 720-operating-hour average limit of 9.48 pound per hour per kiln, beginning seven days from the issuance of the permit modification required to allow the use of natural gas within the affected kilns.

III. By What Criterion is EPA Reviewing This SIP Revision?

EPA has evaluated this revision on the basis of whether it strengthens Indiana's SIP. Prior to Commissioner's Order 2016-04, there were no specific SO₂ emission limitations in the SIP applicable to Carmeuse, nor were there any applicable SO₂ limits identified in its part 70 Operating Permit. The SO₂ emission limits in Commissioner's Order 2016-04 for Carmeuse establish permanent and federally enforceable limits, and should, therefore, strengthen Indiana's SIP.

The adequacy of these limits for providing for attainment is not a prerequisite for approval of these limits. Nevertheless, the purpose of these limits is ultimately to provide for attainment, and EPA is working with Indiana to assure a proper analysis of the adequacy of these limits for this purpose.

IV. What Action is EPA Taking?

EPA is approving Commissioner's Order 2016-04 as part of the Indiana SIP. Incorporating the order's SO₂ emission limits and related requirements for Carmeuse as part of the SIP strengthens Indiana's SIP, which did not have any specific SO₂ emission limits for Carmeuse previously. By approving the Commissioner's Order into the Indiana SIP, these SO₂ emission

limits and applicable reporting, recordkeeping, and compliance demonstration requirements contained in the order would become federally enforceable, and strengthen the Indiana SIP.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this Federal Register publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective **[insert date 60 days after date of publication in the Federal Register]** without further notice unless we receive relevant adverse written comments by **[insert date 30 days after date of publication in the Federal Register]**. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of

the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective **[insert date 60 days after date of publication in the Federal Register]**.

V. Incorporation by Reference.

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Indiana Commissioner's Order described in the amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.³ EPA has made, and will continue to make, these documents generally available through www.regulations.gov, and/or at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

³ 62 FR 27968 (May 22, 1997).

VI. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those

areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final

rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 27, 2017.

Robert A. Kaplan,
Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 52.770 the table in paragraph (d) is amended by adding a new entry for “Carmeuse Lime Inc.” to read as follows:

§ 52.770 Identification of plan.

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(d) * * *

EPA--APPROVED INDIANA SOURCE-SPECIFIC PROVISIONS

CO date	Title	SIP rule	EPA approval	Explanation
* * * *	* * *	*		
11/16/2016	Carmeuse Lime Inc.	N.A.	<u>[insert the date of publication in the Federal Register]</u> , [Insert Federal Register citation]	Limitation intended to support attainment designation.
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